

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RICHARD C. HUNT,)	
)	
Plaintiff,)	
v.)	C. A. No. 06-324-KAJ
)	
BRIAN EMIG and CORRECTIONAL)	JURY TRIAL REQUESTED
OFFICER D. ANGLO,)	
)	
Defendants.)	

DEFENDANT BRIAN EMIG'S ANSWER TO THE COMPLAINT

COMES NOW Defendant Brian Emig ("Defendant"), by and through the undersigned counsel, and hereby answers the Complaint as follows:

Paragraph beginning "On 9/17/04 (under "Statement of Claim"):" Denied, except it is admitted that on September 17, 2004, Defendant did a security check of Plaintiff's cell.

Paragraph beginning "At the time:" Admitted.

Paragraph beginning "Brian Emig:" Denied, except it is admitted that on September 17, 2004, Defendant and Correctional Officer D'Aniello were on the security team on the 4 -12 shift on the 2A Pod.

Paragraph beginning "While C/O Emig was checking:" Denied.

Paragraph beginning "As C/O Emig was walking:" Denied.

Paragraph beginning "As inmate Hunt turned:" Denied.

Paragraph beginning "C/O Emig's reply:" Denied.

Paragraph beginning "About 45 minutes:" Denied that Defendant assaulted Plaintiff. Defendant is without sufficient information to admit or deny the remaining allegations set forth in this paragraph of the Complaint.

Paragraph beginning "He claimed to have:" Defendant is without sufficient information to admit or deny the allegations set forth in this paragraph of the Complaint.

Paragraph beginning "Inmate Hunt filed:" Admitted that Plaintiff prepared a grievance dated September 17, 2004. Defendant is without sufficient information to admit or deny the remaining allegations set forth in this paragraph of the Complaint.

Paragraph beginning "On September 20, 2004:" Defendant is without sufficient information to admit or deny the allegations set forth in this paragraph of the Complaint.

Paragraph beginning "On two more occasions:" Denied.

Sentence beginning "There were:" Denied that Defendant assaulted Plaintiff, harassed or threatened Plaintiff, or engaged in any wrongdoing towards Plaintiff or violated Plaintiff's rights in any manner.

RELIEF

1. It is specifically denied that Plaintiff is entitled to compensatory, punitive or any monetary damages.

2. It is specifically denied that Plaintiff is entitled to declaratory, injunctive or any other relief.

AFFIRMATIVE DEFENSES

3. Plaintiff has failed to state a claim upon which relief can be granted.
4. Plaintiff has failed to exhaust his administrative remedies.
5. Defendant is immune from liability under the Eleventh Amendment.
6. Defendant is entitled to qualified immunity.
7. As to any claims under state law, Defendant is entitled to immunity under the State Tort Claims Act, 10 Del. C. § 4001 *et seq.*

8. As to any claims under state law, Defendant is entitled to sovereign immunity in his official capacity.

9. Defendant cannot be held liable in the absence of personal involvement for the alleged constitutional deprivations.

10. To the extent that Plaintiff seeks to hold Defendant liable based on supervisory responsibilities, the doctrine of *respondeat superior* or vicarious liability is not a basis for liability in an action under 42 U.S.C. § 1983.

11. Defendant, in his official capacity, is not liable for alleged violations of Plaintiff's constitutional rights as he is not a "person" within the meaning of 42 U.S.C. § 1983.

12. Insufficiency of service of process.

13. Insufficiency of process.

14. Lack of jurisdiction over the person and subject matter.

WHEREFORE, Defendant respectfully requests that judgment be entered in his favor and against Plaintiff as to all claims and that attorney fees be awarded to him.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Eileen Kelly
Eileen Kelly, I.D. No. 2884
Deputy Attorney General
Carvel State Office Building
820 North French Street, 6th fl.
Wilmington, DE 19801
(302) 577-8400
eileen.kelly@state.de.us
Attorney for Defendant Brian Emig

Date: September 11, 2006

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2006, I electronically filed *Defendant's Answer to the Complaint* with the Clerk of Court using CM/ECF. I hereby certify that on September 11, 2006, I have mailed by United States Postal Service, the document to the following non-registered party: Richard C. Hunt.

/s/ Eileen Kelly

Deputy Attorney General
Department of Justice
820 N. French St., 6th Floor
Wilmington, DE 19801
(302) 577-8400
eileen.kelly@state.de.us